

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA, et al.)
ex rel. BROOKS WALLACE,)
 ROBERT FARLEY, and)
 MANUEL FUENTES,)

Plaintiffs,)

v.)

EXACTECH, INC.,)

Defendant.)

CIVIL ACTION NUMBER
2:18-CV-01010-LSC

Opposed

**EXACTECH, INC.’S MOTION TO DISMISS RELATORS’ AMENDED
COMPLAINT**

Defendant Exactech, Inc. (“Exactech”) respectfully moves the Court, pursuant to Rules 8(a), 9(b), and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss with prejudice the Amended Complaint that Relators Brooks Wallace, Robert Farley, and Manuel Fuentes (“Relators”) filed under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729–33 (the “FCA”), the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b (the “AKS”), and related state analogues (“state FCA statutes”).

As demonstrated in the accompanying Memorandum of Law in Support of Exactech, Inc.’s Motion to Dismiss the Amended Complaint, Relators’ Amended Complaint remains a shotgun pleading full of conclusory, vague, and immaterial facts unconnected to any cause of action. Furthermore, Relators fail to allege a

short and plain statement of their claims showing that they are entitled to relief, as required under Rule 8(a). The allegations in the Amended Complaint, even if assumed to be true, do not state plausible claims upon which relief can be granted and must be dismissed pursuant to Rule 12(b)(6). Relators also have failed to state with particularity their claims alleging false and fraudulent claims under the FCA, the AKS, and the state FCA statutes, and their Amended Complaint fails to satisfy the heightened pleading requirements of Rule 9(b).

For all of the foregoing reasons, and for those stated in Exactech's Memorandum of Law, Exactech moves the Court to dismiss the Amended Complaint with prejudice.

Respectfully submitted this 30th day of March, 2020.

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Attorneys for Defendant Exactech, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all attorneys of record.

/s/ Jessica Black Livingston

Jessica Black Livingston